

## REMARKS/ARGUMENTS

Claims 1-31 are pending in the application.

Claims 1-31 have been rejected.

Claims 1-31 have been amended as indicated above.

No new matter has been added.

Reconsideration of the Claims is respectfully requested.

### **1. In the above referenced Final Office Action:**

a. Claims 1, 11, and 21 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11 and 21 of copending Application No. 10/675,904;

b. Claims 1-7, 9-17, 19-27, 29, 30 and 31 had been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Published Application No. 2002/0104099 to Novak ("Novak"); and

c. Claims 8, 18 and 28 had been rejected under 35 U.S.C. 103(a) as being unpatentable over Novak in view of U.S. Patent No. 6,868,452, to Eager et al. ("Eager").

The rejections and objections have been traversed and, as such, the applicant respectfully requests reconsideration of the allowability of claims 1-31.

### **2. Double-Patenting Rejection**

*Claims 1, 11, and 21 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11 and 21 of copending Application No. 10/675,904 (Attorney Docket BP2819).*

A "Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection over a Pending 'Reference' Application" had been earlier filed in the case June 10, 2008, with the terminal disclaimer fee under 37 CFR 1.20(d).

## **2. Rejection under Section 102**

*Claims 1-7, 9-17, 19-27, 29, 30 and 31 had been rejected under 35 U.S.C. 102(e) as being anticipated by Novak.*

Applicant respectfully submits that the user-tuned broadcast of Novak does not teach or disclose all of the limitations of Applicant's amended claims.

The Final Office Action submits that "[i]n light of the specification, the Examiner interprets Applicant's uses of 'channel [that] may be pushed' to means providing a path of access through the network (authorized users) in order to display a list of available media (user created media channels) to a receiving user in a similar manner to broadcast television (become their own broadcasters)." (Final Office Action at p. 4).

The BPAI simply submits that "Appellants present no argument in the Brief that the Examiner's interpretation is erroneous." (*Ex parte Karaoguz & Bennett*, Appeal No. 2009-011089, December 30, 2011).

Novak recites the action of a user to tune to a synthetic channel as they would to a convention television broadcast. Novak recites that an "individual can upload media objects to a server and specify a manner in which the media objects are to be played as a media program to an end user. The media program can be provided to the end user via a synthetic channel, which can be tuned to by the end user as if tuning to a conventional television broadcast channel." (Novak, Abstract).

Novak does not recite the term "push" with respect to its media programming. In more kind to a "broadcast," the user tunes to the media programming. (see Novak, Abstract; see also Novak ¶¶ 0026, 0038 ("cable subscriber can tune to any particular channel . . ."); Novak ¶ 0069 ("the end users can tune to the uploaded media program(s) accessible via this channel . . ."); Novak ¶ 0071 ("user can subsequently tune to or select the synthetic channel 804 . . .").

As set out by Applicant's Specification, the "media exchange network allows users to effectively become their own broadcasters from their own homes by creating their own media channels and pushing those media channels to other authorized users on

the media exchange network, such as friends and family members.” (Specification at p. 18, ¶ 55). That is Applicant set out by analogy that users “*effectively become* their own broadcasters from their own homes.” Pushing, as set out by Applicant’s claims, is not “broadcasting,” such as that “which can be tuned to by the end user as if tuning to a conventional television broadcast channel.” (Novak, Abstract).

Moreover, Novak does not teach or disclose pushing one or more of media, data and service via at least one customized media channel from a first geographic location associated with a network protocol address of a distributed media network to a second geographic location associated with another network protocol address based upon the identification of another user associated with the second geographic location as set out by Applicant’s claims.

In contrast to the user-tuned broadcast of Novak, Applicant’s Independent Claim 1 as amended recites, *inter alia*, a “method for programming media content in a distributed media network that includes an Internet-based media exchange network infrastructure, the method comprising: selecting at least one customized media channel established by a user based on at least one input from said user; identifying one or more of media, data and service for said selected at least one customized media channel; and pushing said one or more of media, data and service via said at least one customized media channel from a first geographic location associated with a network protocol address of the distributed media network to a second geographic location associated with another network protocol address based upon the identification of another user associated with said second geographic location.”

Also, Applicant’s Independent Claim 11 as amended recites, *inter alia*, a “machine-readable storage having stored thereon, a computer program having at least one code section for programming media content in a distributed media network that includes an Internet-based media exchange network infrastructure, the at least one code section being executable by a machine for causing the machine to perform steps comprising: selecting at least one customized media channel . . . ; identifying one or more of media, data and service for said selected at least one customized media channel; and pushing

said one or more of media, data and service via said at least one customized media channel from a first geographic location associated with a network protocol address of the distributed media network to a second geographic location associated with another network protocol address based upon the identification of another user associated with said second geographic location.”

Further, Applicant’s Independent Claim 21 as amended recites, *inter alia*, a “system for programming media content in a distributed media network that includes an Internet-based media exchange network infrastructure, the system comprising: at least one processor that selects at least one customized media channel . . . ; said at least one processor identifies one or more of media, data and service for said selected at least one customized media channel; and said at least one processor pushes said one or more of media, data and service via said at least one customized media channel from a first geographic location associated with a network protocol address of the distributed media network to a second geographic location associated with another network protocol address based upon the identification of another user associated with said second geographic location.”

Applicant respectfully submits that the user-tuned broadcast of Novak does not teach each and every limitation of Applicant’s claims, and accordingly, does not provide a basis for anticipation.

Claims 2-7, 9 and 10 are dependent upon claim 1. Claims 12-17, 19 and 20 are dependent upon claim 11. Claims 22-27 and 29-31 are dependent upon claim 21. Claims 2-7, 9, 10, 12-17, 19, 20, 22-27 and 29-31 introduce additional patentable subject matter, which Applicant respectfully submits that the reasons that distinguish claims 1, 11 and 21 over the present rejection are applicable in distinguishing claims 2-7, 9, 10, 12-17, 19, 20, 22-27 and 29-31 over the same rejection.

**3. Rejection under Section 103**

*Claims 8, 18 and 28 had been rejected under 35 U.S.C. 103(a) as being unpatentable over Novak in view of Eager.*

Applicant respectfully submits that because Novak does not set out all of the limitations to Applicant's base claims, that the hypothetical combination of Novak in view of Eager does not provide a *prima facie* showing of obviousness as the references when combined do not teach or suggest all the Applicant's claim limitations.

## CONCLUSION

The Applicant respectfully submits that Claims 1-31 in the Application are in condition for allowance, and respectfully requests allowance of such Claims.

The Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor application in relation to the instant application. The Examiner is advised that any such previous disclaimer and the prior art that it was made to avoid, may need to be revisited. Further, the claims in the instant application may be broader than those of a parent application. Moreover, the Examiner should also be advised that any disclaimer made in the instant application should not be read into or against the parent application.

No additional fees are believed to be due. In the event that additional fees are due or a credit for an overpayment is due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Garlick Harrison & Markison Deposit Account No. 50-2126.

The Examiner is invited to contact the undersigned by telephone, facsimile, or email if the Examiner believes that such a communication would advance the prosecution of the present invention.

## RESPECTFULLY SUBMITTED,

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